

Donald Green

From: David Hodges
Sent: Wednesday, January 25, 2017 9:49 AM
To: Donald Green
Subject: FW: Request for meet and confer

Here is the email string.

From: Micah Hines [mailto:mhines@blackwellburke.com]
Sent: Wednesday, January 25, 2017 9:25 AM
To: Randy Benham <rbenham@augbiomed.com>; David Hodges <dhodges@kennedyhodes.com>; Ben Hulse <BHulse@blackwellburke.com>
Cc: Ahmann, Bridget M. <Bridget.Ahmann@FaegreBD.com>; Gabriel Assaad <gassaad@kennedyhodes.com>; Kim Black <kblack@kennedyhodes.com>; Jerry Blackwell <blackwell@blackwellburke.com>; Mary Young <myoung@blackwellburke.com>
Subject: RE: Request for meet and confer

Counsel,

We called Judge Noel's chambers and were informed that he is unavailable on February 16 and 17. As things stand, Defendants are not comfortable with hearing dates later than the week of February 6 due to the nearness of the discovery close and the need for a resolution before we depose Dr. Augustine.

Mr. Benham, I am sorry to hear about your father and hope that he is recovering. As an accommodation, we would have no issue with you taking an extra couple of days on your response brief (to Feb. 1) if Judge Noel approves. But, we do believe you would need to address that request to Judge Noel.

Best,
Micah

Micah Hines
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From: Randy Benham [mailto:rbenham@augbiomed.com]
Sent: Tuesday, January 24, 2017 11:20 AM
To: David Hodges <dhodges@kennedyhodes.com>; Ben Hulse <BHulse@blackwellburke.com>
Cc: Ahmann, Bridget M. <Bridget.Ahmann@FaegreBD.com>; Gabriel Assaad <gassaad@kennedyhodes.com>; Kim Black

<kblack@kennedyhodes.com>; Micah Hines <mhines@blackwellburke.com>; Jerry Blackwell
<blackwell@blackwellburke.com>; Mary Young <myoung@blackwellburke.com>
Subject: Re: Request for meet and confer

Although this is largely between the two of you, I'd like to add a personal request. My 87-year-old father was hospitalized this weekend with pneumonia. I spent the weekend and most of yesterday with him at the hospital. I'd very much like to give him my attention this week rather than responding to this Motion.

Ben, would you please reschedule the Motion and allow me an additional few days to respond?

Randy

From: David Hodges <dhodges@kennedyhodes.com>
Date: Tuesday, January 24, 2017 at 10:08 AM
To: Ben Hulse <BHulse@blackwellburke.com>, Randy Benham <rbenham@augbiomed.com>
Cc: "Ahmann, Bridget M." <Bridget.Ahmann@FaegreBD.com>, Gabriel Assaad <gassaad@kennedyhodes.com>, Kim Black <kblack@kennedyhodes.com>, Micah Hines <mhines@blackwellburke.com>, Jerry Blackwell <blackwell@blackwellburke.com>, Mary Young <myoung@blackwellburke.com>
Subject: RE: Request for meet and confer

Ben –

We are going through the documents now and intend on producing documents to you which are subject to production. With that in mind, can you move the hearing to the next week (assuming you are still unsatisfied)? We already have a status conference set for that week anyway.

From: Ben Hulse [<mailto:BHulse@blackwellburke.com>]
Sent: Tuesday, January 24, 2017 6:59 AM
To: David Hodges <dhodges@kennedyhodes.com>; Randy Benham <rbenham@augbiomed.com>
Cc: Ahmann, Bridget M. <Bridget.Ahmann@FaegreBD.com>; Gabriel Assaad <gassaad@kennedyhodes.com>; Kim Black <kblack@kennedyhodes.com>; Micah Hines <mhines@blackwellburke.com>; Jerry Blackwell <blackwell@blackwellburke.com>; Mary Young <myoung@blackwellburke.com>
Subject: RE: Request for meet and confer

Hi David,

We have satisfied the meet-and-confer requirement. It has now been a week since Micah's email stating the relief we are seeking and asking Augustine's consent, and still Augustine has not given consent to all or part of the relief we are seeking. You and Mr. Benham have seen the full articulation of our reasons in the motion that was filed last Thursday after Augustine failed to consent to the relief. If Augustine is willing now to agree to the relief we are requesting and make prompt production of the documents at issue, we can pull down the motion.

It is unusual for someone to accuse another of bad faith and then in the same breath ask for an extension of time. Nonetheless, we did contact Judge Noel's chambers to see if a hearing was available later that week to address your desire not to travel on the weekend of the Super Bowl. No other hearing time was available that week. Judge Noel has been accommodating of telephone appearances in the past and we would have no objection to you appearing by telephone. Thanks.

Best,
Ben

Benjamin W. Hulse
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From: David Hodges [<mailto:dhodges@kennedyhodges.com>]
Sent: Monday, January 23, 2017 1:13 PM
To: Micah Hines; Randy Benham; Ben Hulse
Cc: Ahmann, Bridget M.; Gabriel Assaad; Kim Black
Subject: RE: Request for meet and confer
Importance: High

Ms. Hines:

As you know, a meet and confer is to be held BEFORE the filing of a motion to compel. Your artificial one day deadline to meet your demands is insufficient to meet your obligations of conferring in good faith. I ask that you pull your motion down on that basis alone. I also request that you move the hearing date as the morning after the Super Bowl proves problematic for someone trying to get out of Houston that weekend (the game is being played here).

Please let me know your intentions and whether you are opposed to moving the hearing date.

David W. Hodges



dhodges@kennedyhodges.com



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KENNEDY HODGES, L.L.P.

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www.kennedyhodges.com



From: Micah Hines [<mailto:mhines@blackwellburke.com>]

Sent: Friday, January 20, 2017 2:49 PM

To: Randy Benham <rbenham@augbiomed.com>; Ben Hulse <BHulse@blackwellburke.com>

Cc: Ahmann, Bridget M. <Bridget.Ahmann@FaegreBD.com>; Gabriel Assaad <gassaad@kennedyhodes.com>; Kim Black <kblack@kennedyhodes.com>; David Hodges <dhodges@kennedyhodes.com>

Subject: RE: Request for meet and confer

Mr. Benham,

In my last email, we asked you to let us know by Wednesday January 18 at 5 pm if you would agree to production of documents on your logs and whether you would produce them by Monday, January 23 at 5 pm. We explained that if not, we intended to file a motion with the court. Because you did not respond to that request, we filed a motion.

We would be willing to have a further meet and confer with you and Mr. Hodges if your position is that you are willing to produce some or all of the documents we are seeking.

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From: Randy Benham [<mailto:rbenham@augbiomed.com>]

Sent: Thursday, January 19, 2017 11:13 AM

To: Micah Hines <mhines@blackwellburke.com>; Ben Hulse <BHulse@blackwellburke.com>

Cc: Ahmann, Bridget M. <Bridget.Ahmann@FaegreBD.com>; Gabriel Assaad <gassaad@kennedyhodes.com>; Kim Black <kblack@kennedyhodes.com>; David Hodges <dhodges@kennedyhodes.com>

Subject: Re: Request for meet and confer

Ms Hines and Mr. Hulse,

I am concerned about your lack of response to David Hodges's request for a telephonic meet-and-confer. Given that the work-product privilege that you have challenged belongs, at least in part, to Kennedy Hodges, it seems appropriate to involve KH.

Please let me know how you intend to proceed.

Randy

From: Randy Benham <rbenham@augbiomed.com>

Date: Wednesday, January 18, 2017 at 11:45 AM

To: David Hodges <dhodges@kennedyhodes.com>, Micah Hines <mhines@blackwellburke.com>

Cc: "Ahmann, Bridget M." <Bridget.Ahmann@FaegreBD.com>, Gabriel Assaad <gassaad@kennedyhodes.com>, Kim

Black <kblack@kennedyhodes.com>
Subject: Re: Request for meet and confer

I am available on those dates. Just let me know a time.

Randy

From: David Hodges <dhodges@kennedyhodes.com>
Date: Tuesday, January 17, 2017 at 9:08 AM
To: Micah Hines <mhines@blackwellburke.com>, Randy Benham <rbenham@augbiomed.com>
Cc: "Ahmann, Bridget M." <Bridget.Ahmann@FaegreBD.com>, Gabriel Assaad <gassaad@kennedyhodes.com>, Kim Black <kblack@kennedyhodes.com>
Subject: RE: Request for meet and confer

I am out of the country this week, so I propose we all get on a call when I return next week. I'm available 12-2 on Monday or any time on Tuesday.

From: Micah Hines [<mailto:mhines@blackwellburke.com>]
Sent: Tuesday, January 17, 2017 8:02 AM
To: Randy Benham <rbenham@augbiomed.com>
Cc: Ahmann, Bridget M. <Bridget.Ahmann@FaegreBD.com>; David Hodges <dhodges@kennedyhodes.com>
Subject: RE: Request for meet and confer

Mr. Benham,

Because you asserted various privileges on Augustine's privilege logs, we requested a meet and confer with you. Defendants do not believe Dr. Augustine has established that the Kennedy Hodges related documents on his August 17 or December 22 privilege logs are entitled to protection based on an attorney-client or expert consulting relationship. Accordingly, Defendants request production of the documents listed on the 23 entries of the August 17 privilege log, and production of the documents listed on the first 84 entries of the December 22 privilege log.

Please let us know by this Wednesday January 18 at 5 pm whether you agree to production of these documents, and whether you will produce the documents by Monday, January 23 at 5 pm. If not, Defendants intend to file a motion requesting relief from the court.

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From: Randy Benham [<mailto:rbenham@augbiomed.com>]
Sent: Thursday, January 12, 2017 4:47 PM

To: Micah Hines <mhines@blackwellburke.com>
Cc: Ahmann, Bridget M. <Bridget.Ahmann@FaegreBD.com>; David Hodges <dhodges@kennedyhodges.com>
Subject: Re: Request for meet and confer

Ms Hines,

I have included David Hodges on this email because in many cases the privilege involves work product of the Kennedy Hodges firm arising from the consulting relationship with Dr. Augustine and the Augustine entities.

Before we get into your more detailed inquiries, I suggest that you and Mr. Hodges discuss this issue directly.

I will not be in the office or looking at email until Monday. Perhaps we can talk more early next week.

Randy

From: Micah Hines <mhines@blackwellburke.com>
Date: Wednesday, January 11, 2017 at 3:05 PM
To: Randy Benham <rbenham@augbiomed.com>
Cc: "Ahmann, Bridget M." <Bridget.Ahmann@FaegreBD.com>
Subject: RE: Request for meet and confer

Mr. Benham,

We are requesting a meet and confer to discuss Dr. Augustine's claims of privilege and protection over documents on his privilege logs. We would like to discuss Dr. Augustine's affidavit regarding the dates and nature of his relationship with Kennedy Hodges, including whether any documents exist to verify the dates, and what steps you and/or Dr. Augustine took to verify the dates and information in the affidavit.

In addition, we would like to discuss the basis for your assertions of privilege – including how and whether Dr. Augustine's affidavit and your privilege logs establish privilege over the documents.

We would also like to discuss whether the third privilege log contains all of the documents from the first two logs, how the logs differ, the reasons that additional documents were included on the third privilege log, the subject matter descriptions on the logs, and the titles of the individuals on the logs.

Please let us know your availability.

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From: Randy Benham [<mailto:rbenham@augbiomed.com>]
Sent: Friday, January 06, 2017 6:51 PM
To: Micah Hines <mhines@blackwellburke.com>
Subject: Re: Request for meet and confer

Would it be possible to give me an idea of your concerns prior to the conversation?

Randy

From: Micah Hines <mhines@blackwellburke.com>
Date: Friday, January 6, 2017 at 4:50 PM
To: Randy Benham <rbenham@augbiomed.com>
Cc: "Ahmann, Bridget M. (Bridget.Ahmann@FaegreBD.com)" <Bridget.Ahmann@FaegreBD.com>
Subject: Request for meet and confer

Mr. Benham,

We would like to meet and confer with you regarding Dr. Augustine's affidavit and your privilege log. Please let us know your availability on Monday afternoon and Tuesday.

Thank you,
Micah



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